STATE OF VERMONT

HUMAN SERVICES BOARD

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| In re | ) | Fair Hearing No. 20,458 |
| | ) | |
| Appeal of | ) | |

## INTRODUCTION

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) not to reimburse her for her purchase of the prescription drug Tussionex under Vermont Health Access Plan (VHAP). The issue is whether the petitioner met the requirements for prior approval of this particular medication.

## FINDINGS OF FACT

1. The petitioner is enrolled in the Department's VHAP program, which includes coverage of most prescription drugs. However, many drugs that are covered under VHAP require Prior approval from the Department before payment can be made to a participating pharmacy. The Department also maintains a list of "preferred drugs", or generics, which must be used as a first resort unless medically contraindicated. Generally, cough medicines require the use of generics. (See *infra*.)

2. In July 2006 the petitioner was prescribed Tussionex, a non-codeine, brand-name prescription medication

to relieve coughing. On the Department's prior authorization form the petitioner's doctor wrote only that the petitioner was "intolerant to codeine".

3. When the petitioner went to fill her prescription her pharmacist informed her that it was not covered by VHAP. The petitioner purchased the medication with her own funds ($48.18) and filed this appeal to seek reimbursement.

4. At a hearing held on August 30, 2006, the petitioner maintained that besides being intolerant to codeine, generic and non-generic non-codeine medications she had used in the past had been ineffective, and that this is why her doctor had prescribed Tussionex. She also stated that she did not learn until later from her pharmacy that there exists a generic medication with a non-codeine formulation similar to Tussionex, which she had never tried. Based on these allegations the Department agreed to continue the matter to allow the petitioner to obtain a statement from her doctor that the generic equivalent of Tussionex, which could have been approved under VHAP, was inappropriate for her use.

5. At a phone conference held on September 15, 2006, the petitioner stated that her doctor had been uncooperative in providing any further information.

ORDER

The Department's decision is affirmed.

REASONS

There is no dispute in this matter that Tussionex is considered a "branded" cough medication in accordance with the Department's VHAP and Medicaid regulations. W.A.M. §§ 4005(B)(10) and M810. The regulations specifically provide that coverage is limited to a low-cost generic or "multiple-source" drug unless "a physician certifies in his own handwriting that a specific brand of a multiple-source drug is medically necessary". The regulation requires further that "the handwritten phrase 'brand necessary' or 'brand medically necessary' must appear on the face of the prescription". W.A.M. § M813.2.

In this case the petitioner presented no medical evidence either that Tussionex is unique in its formulation (i.e., not a multiple-source drug) or that her use of its generic equivalent would have been in any way medically contraindicated. It is not clear, as the petitioner asserts, why neither her doctor nor her pharmacy timely informed her

of the availability of a generic equivalent of Tussionex.[1] Nonetheless, the above regulations regarding VHAP coverage are clear, and inasmuch as the Department's decision in this matter was in accord with its regulations, the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing No. 17.

# # #

[1] Department records indicate that all participating pharmacists were recently notified of "alternative choices" specifically for Tussionex. Although she has not indicated she wishes to do so, the petitioner may be able to avail herself of the Department's assistance in negotiating with her pharmacy and/or her doctor regarding reimbursement from them of all or part of her out-of-pocket expenses in this matter.